IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3806 OF 2007

Ramakant Babaram Sawant and ors. ..Petitioners.
Vs.
Arvind Babaram Sawant and ors. ..Respondent.

Mr.P.D.Dalvi for the Petitioners.

Mr.K.K.Malpathak for the Respondent No.1.

Mr.Vanarse, A.G.P. for the Respondent Nos. 3 to 7.

CORAM: S.C. DHARMADHIKARI, J.
DATE : 08TH AUGUST, 2007

P.C.

1. Rule.

2. By consent, Rule made returnable forthwith.

3. Heard counsel for the parties.

4. This writ petition under Article 226 and 227 of the Constitution of India is directed against the order passed by the Additional Commissioner, Konkan Region dated 20th December,2006 (hereinafter referred to as "impugned order").

5. The Additional Commissioner in the course of the impugned order has allowed the revision application and directed that the order dated 31st Jan.2006 passed by

the Additional Collector, Ratnagiri is quashed and set aside and the order passed by the Sub Divisional Officer, Ratnagiri Sub Division dated 11th April, 2005 stands restored.

6. The Additional Commissioner's jurisdiction was invoked by the first respondent aggrieved by an order passed by the Additional Collector on the appeal which was preferred by the petitioners before me.

7. Very brief facts leading to the filing of the present Petition will have to be narrated.

8. The petitioners and the respondent No.1 are brothers. A complaint was made by the first respondent before the authority that some trees have been illegally cut by the petitioners and they have thus violated the provisions of The Maharashtra Felling of Trees (Regulation) Act, 1964. The concerned authority proceeded against the present petitioners for their alleged illegal felling of trees and concluded that they should pay penalty of Rs.500/- per tree amounting in total Rs.10,500/-. That order of the Tree officer of the concerned forest range was passed on 1st December, 2003.

9. Aggrieved by that order, the first respondent

preferred an appeal before the Sub Divisional Officer, Ratnagiri. He allowed the same. While allowing the same penalty imposed upon the petitioners by the Tree Officer was enhanced from 500/- to 1000/- rupees per tree and the total amount, imposed as penalty, came to be quantified at Rs.25,000/-.

10. The petitioners therefore, had no alternative but to approach the Appellate Authority. The Appellate Authority in this case is the Collector and that Appeal of the petitioners was heard by the Collector. He set aside the order of the Sub Divisional Officer and maintained that of the Tree Officer.

11. The first respondent aggrieved by that order of the Additional Collector initially preferred an appeal but later on invoked the revisional jurisdiction of the Commissioner exercising powers under the Land Revenue Code. The Commissioner after hearing both sides allowed the revision application and set aside the order of the Additional Collector, Ratnagiri so also the order of the Tree Officer and maintained that of the Sub Divisional Officer. In other words, he maintained the order enhancing the penalty from Rs.500/- to 1000/- per tree and imposing penalty of Rs.25,000/- upon the petitioners, by Sub Divisional Officer, Ratnagiri.

12. The petitioners invoke the writ jurisdiction of this court by challenging the order of the Additional Commissioner, in this petition.

13. After hearing Mr. Dalvi and Mr. Malpathak so also Mr.Vanarase, A.G.P. at length and perusing the pleadings and the annexures thereto so also relevant provisions of The Maharashtra Felling of Trees (Regulation) Act,1964, I am of the opinion that core issue is not only the maintainability of the appeal/revision but also locus of the first respondent to complain about the illegal felling of the trees and imposing of the inadequate penalty for the said act. They need to be considered in detail and at length. They go to the root of the matter. Several contentions raised before me with regard to maintainability of the appeal preferred by the first respondent before the Sub Divisional Officer, Ratnagiri and assuming it to be maintainable, locus of the first respondent to pray for reliefs therein, namely, enhancement of penalty, are matters, which must be dealt with by the authorities at the first instance. All such issues are being raised before me for the first time and they would necessiate going into some factual aspects. I, therefore, suggested to both sides that it would be fair, just and proper if the impugned order is set aside and the Appeal preferred by petitioner before the Collector is restored

to its file and reheard on merits and in accordance with law. Although, this appeal is preferred by the petitioners, both sides agreed that the first respondent being party thereto, it would be open for him to make appropriate submissions as well. Since this course is not opposed by both sides, accordingly, Rule can be made absolute by following order.

ORDER

1) The order dated 20th December, 2006 passed by the Additional Commissioner, Konkan Division is quashed and set aside. Since that order is set aside, although the same would mean Additional Collector's order being maintained, however, in the peculiar facts of this case, it is fair even to set aside the Additional Collector's order and to restore the petitioners' appeal before the Collector for hearing afresh not only on the ground of maintainability of the proceeding before the Sub Divisional Officer but also on the merits as well.

2) In other words today the order passed by the Sub Divisional Officer, Ratnagiri would Stand Restored, but, the same will not be given effect to till the Collector, Ratnagiri hears the LTR Appeal SR-1/2005 on the above pleas.

3) The Collector is directed to hear such appeal as expeditiously as possible and preferably within a period of four months from the date of receipt of this court's order.

4) Needless to state that it would be open for the petitioner to challenge the order of the Sub Divisional Officer, Ratnagiri on the ground that the appeal preferred before him by the first respondent was not maintainable either under Trees Act or under M.L.R.Code so also assuming it to be maintainable, appellate provision could not have been invoked by the first respondent in the facts of this case.

5) The Collector must address himself on all these issues and also on merits of the matter. The Collector is also directed to pass a reasoned order after hearing both parties within the stipulated time.

6) Rule is made absolute in the above terms with no order as to costs.

7) This order is passed also because Mr.Dalvi appearing for the Petitioners states that some Amount of Penalty is already deposited with the Authorities.

(S.C. DHARMADHIKARI, J.)